

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

CONNECT AMERICA FUND

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WC Docket No. 10-90

COMMENTS OF ITTA

**Genevieve Morelli
Micah M. Caldwell
ITTA – The Voice of Mid-Size
Telecommunications Carriers
1101 Vermont Ave., NW
Suite 501
Washington, D.C. 20005**

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SUMMARY

Targeted rural broadband experiments could be very useful to the Commission in adopting policies that will facilitate deployment of last-mile broadband networks in rural price cap and rate-of-return areas that lack access to advanced broadband services. In the *FNPRM*, the Commission seeks input on the budget, selection criteria, and other considerations it should take into account in conducting such experiments, including whether certain aspects of the application and selection process should differ for experiments proposed in rate-of-return, as opposed to price cap, areas.

ITTA submits that the Commission should adopt a budget of no more than \$100 million dollars for rural broadband experiments and that experimental support should be allocated on a one-time basis as a lump, up front sum. \$100 million should be sufficient to meet the Commission's goal of selecting a limited number of projects that will allow it to move forward quickly with decisions on Connect America Fund implementation issues without expanding the overall CAF budget or delaying execution of broader universal service reforms.

In establishing the selective criteria for rural broadband experiments, ITTA believes that "most broadband deployed in unserved areas with the available budget," rather than "cost effectiveness," should serve as the primary criterion on which the Commission should base funding decisions. ITTA also believes that rural broadband experiments are not the place to adopt changes in policy that depart from the decisions the Commission made in the *USF/ICC Transformation Order*. The Commission has indicated that the purpose of these experiments is to inform its actions with respect to addressing outstanding issues in implementing the *USF/ICC Transformation Order*. Therefore, the Commission should apply the standards it already has established relating to broadband speeds, buildout obligations, and other service metrics in the

context of rural broadband experiments. The Commission also should focus funding on unserved areas and avoid offering support for competitors to fund overbuilds or for projects that are or should be funded by other worthwhile government programs.

ITTA agrees with the Commission's proposal to allow non-ETCs to apply for experimental support, so long as they obtain ETC status before receiving such funding. With respect to the impact that rural broadband experiments have on CAF Phase II for price cap carriers, the Commission should remove any areas that are selected for experimental support from the offer of a statewide commitment and/or the competitive bidding process. These areas should be replaced with other areas that will receive comparable funding to further the Commission's broadband deployment objectives. Furthermore, ETC obligations for incumbent providers should be removed in areas where experimental funding is provided to another entity, regardless of whether the incumbent is a price cap or rate-of-return carrier.

Finally, the Commission should adopt certain modifications to the application and selection process for experiments proposed in areas where a rate-of-return company is the incumbent provider. Specifically, the Commission should establish an initial application window that is limited to incumbent rate-of-return carriers, allow such carriers a right of first refusal to conduct the same deployment proposed by a non-incumbent for the same or a lesser amount of support, and permit applicants to submit proposals on a census block, rather than census tract basis.

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ITTA – The Voice of Mid-Size Telecommunications Carriers hereby submits its comments in response to the January 31, 2014 *Further Notice of Proposed Rulemaking* (“*FNPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ The Commission seeks comment in the *FNPRM* on a variety of issues related to implementation of targeted rural broadband experiments that would provide unallocated Connect America Fund (“CAF”) support to entities to deploy last-mile wired and/or wireless broadband networks in rural price cap and rate-of-return (“RoR”) areas that lack access to advanced broadband services.²

In the *FNPRM*, the Commission seeks input on the budget,³ selection criteria,⁴ and other considerations it should take into account in conducting rural broadband experiments.⁵ The Commission also asks whether certain aspects of the application and selection process should

¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, FCC 14-5 (rel. Jan. 31, 2014) (“*FNPRM*”).

² *See id.* at ¶ 93.

³ *Id.* at ¶¶ 203-04.

⁴ *Id.* at ¶¶ 211-18.

⁵ *Id.* at ¶¶ 219-23.

differ for experiments proposed in RoR, as opposed to price cap, areas.⁶ ITTA addresses each of these areas by topic below.

DISCUSSION

I. Budget

The Commission raises several questions in the *FNPRM* regarding the appropriate budget for rural broadband experiments in price cap and RoR areas. Specifically, the Commission seeks input on whether the Commission should make available \$50 million, \$100 million, or some other amount in total support for these experiments, whether support should be distributed on a one-time or recurring basis, and whether it should set aside a separate amount for experiments in areas outside of price cap territories.⁷

ITTA submits that the Commission should devote no more than \$100 million from the broadband reserve account to fund these experiments. The Commission has made it clear that it plans to undertake these experiments “without increasing the overall size of the Connect America Fund, and without increasing the contribution burden on consumers.”⁸ Moreover, it is not the Commission’s goal to use all unallocated broadband reserve monies to fund rural broadband experiments, but rather an amount that is sufficient “for a limited number of projects” that will enable it to gather information to assist in designing the CAF Phase II competitive bidding process in price cap areas and to inform its decisions regarding implementation of a longer-term CAF mechanism in areas where the incumbent provider is a RoR company.⁹

\$100 million should be sufficient to achieve the Commission’s aims. Conceptually, these

⁶ *Id.* at ¶¶ 205-10.

⁷ *Id.* at ¶ 204.

⁸ *Id.* at ¶ 93.

⁹ *Id.* at ¶ 204.

experiments are to be targeted, as the Commission expects to select only a handful of projects that will best facilitate its evaluation of the limited CAF implementation issues that remain outstanding.¹⁰ While an added benefit of these experiments may be expansion of advanced broadband service in rural, high-cost areas, that is not, nor should it be, the Commission's primary goal.

With respect to whether the Commission should allocate experimental support on a recurring or non-recurring basis (or some combination thereof), ITTA submits that it makes little sense to distribute the funding on a recurring basis with ITTA's suggested fixed budget of \$100 million. Distributing experimental support as one-time, up front infusion of capital will provide the most value and is most consistent with the stated objectives of these rural broadband experiments.

The Commission has made clear that these rural broadband experiments are in no way designed "to delay any decisions regarding implementation of [broader] universal service reforms."¹¹ Rather, the Commission intends "to leverage whatever knowledge can be developed *quickly* through such experiments" to inform its judgment as it addresses important policy issues in several of its pending universal service rulemaking dockets.¹² Providing one-time support in a lump, up front sum will allow successful applicants to move forward quickly, ensuring that the FCC is able to gather the information it seeks from these experiments with the least amount of delay.

Providing recurring support over a period of time would be problematic because it is inconsistent with the limited, fast-moving, and experimental nature of these efforts. The

¹⁰ *See id.* at ¶ 109.

¹¹ *Id.* at ¶ 98.

¹² *Id.* (emphasis added).

proposition of distributing \$50-\$100 million on a recurring basis contemplates a much larger budget than suggested by the Commission and contradicts “what is intended to be short-term experiment in 2014.”¹³ Furthermore, it would be contrary to the FCC’s objective of providing the experimental funding “most efficiently within our finite \$4.5 billion Connect America budget.”¹⁴

As for whether the Commission should establish separate funds for rural broadband experiments in price cap and RoR areas, ITTA believes such an approach makes sense. Various factors, including basic operating circumstances, economic conditions, regulatory treatment, and historical funding levels are much different in price cap territories than in RoR service areas. The Commission has long recognized that RoR carriers “operate in many of the country’s most difficult and expensive areas.”¹⁵ Allocating separate funding for price cap and RoR areas would be consistent with the FCC’s longstanding practice of administering different universal service mechanisms for price cap and RoR carriers. In acknowledging these differences, the Commission should ensure that there is an adequate amount of funding for a suitable number of projects when it establishes a set amount of funding for each type of service area.

II. Selective Criteria

The Commission poses a number of questions in the *FNPRM* regarding the selective criteria for rural broadband experiments, including whether cost effectiveness (e.g., an applicant

¹³ *Id.* at ¶ 207.

¹⁴ *Id.* at ¶ 94.

¹⁵ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 26 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

will serve an area for an amount less than model-based support) should be used as the primary criterion to award experimental support;¹⁶ whether applications should be afforded additional weight if the applicant will provide speeds higher than 4/1 Mbps or 6/1.5 Mbps or offer high or unlimited usage allowances;¹⁷ and how it should score applications based on whether they seek one-time funding v. recurring support.¹⁸

Rather than using "cost effectiveness" as the primary determinant of an applicant's success, ITTA submits that the FCC should rely on the related but different criterion of "most broadband deployed in unserved areas with the available budget." Assigning this factor the most weight in evaluating proposals for rural broadband experiments is a better approach to further the Commission's goal of "extending services to as many consumers, businesses, and community anchors institutions as possible" with the limited amount of unallocated broadband reserve funding that will be available.¹⁹ Relying on "cost effectiveness" as the primary selective criterion could result in sub-optimal outcomes where the Commission is able to allocate only a portion of the budget so that many areas that may have been eligible for experimental funding receive no benefit at all. Obviously, the FCC also will need to consider the total cost of an experiment relative to the total price cap or RoR experimental budget in selecting experiments.

In addition, ITTA believes that proposals should be weighted based on the varying cost of serving the particular area(s) at issue. A company offering to provide service in a higher than average high-cost area should not be benchmarked for selection purposes against a company offering to provide service in a lower than average high-cost area. In this situation, the bids need

¹⁶ *FNPRM* at ¶ 213.

¹⁷ *Id.* at ¶ 214.

¹⁸ *Id.* at ¶ 213.

¹⁹ *USF/ICC Transformation Order* at ¶ 1190.

to be weighted appropriately to reflect the differences in the costs of broadband deployment in the target areas.

Regarding the Commission's consideration of whether the applicant proposes to serve an area for an amount less than model-based support calculated under the Connect America Cost Model ("CACM"), ITTA believes this criterion is perfectly reasonable for rural broadband experiments in price cap areas. However, the Commission should not rely on this criterion in reviewing applications for experiments proposed in RoR areas for the reasons articulated in Section IV. below.

With respect to applications that propose to provide speeds that are higher than 4/1 or 6/1.5 Mbps, ITTA believes that such proposals should not receive additional weight based on this criterion alone. While it would make sense to award funding to an applicant proposing to offer higher broadband speeds if two applications are virtually the same in all other respects, providing additional weight for this criterion by itself would be contrary to the FCC's decision in the *USF/ICC Transformation Order* to consider an area served for purposes of broadband availability if a minimum bandwidth of 4/1 Mbps is offered.²⁰

While the FCC is no doubt looking for opportunities to "do more with less," these experiments, which are funded with CAF support, are not the place to deviate from established Commission policy.²¹ The fundamental notion of universal service is to maximize the availability of *reasonable* service to as many consumers as possible.²² Thus, universal service

²⁰ *Id.* at ¶¶ 93-94.

²¹ See *FNPRM* at ¶ 94 (indicating that the Commission seeks "to learn whether providers are willing and able to deliver services with performance characteristics well in excess of the minimum standards that price cap carriers accepting model-based support are required to offer to all locations in funded areas, for the same amount or less support than that calculated by the forward-looking cost model").

²² See 47 U.S.C. § 254.

policy inherently values coverage over speed once a certain threshold is satisfied. Therefore, generally speaking, projects supported with CAF funding, including these rural broadband experiments, should not be awarded preference based on bandwidth.

Moreover, the intended purpose of these experiments is to inform implementation of other aspects of the CAF that must be effectuated based on the 4/1 Mbps minimum speed threshold, not to justify a change in Commission policy. The Commission has stated explicitly that it is seeking “projects that achieve the goals of the *USF/ICC Transformation Order*.”²³ The Commission also has indicated that these rural broadband experiments “are not intended to resolve legal or policy questions arising from the transition. Rather, they are intended to help the Commission gather a factual record of information” to guide its decision making in implementing programs that already have been established.²⁴ The Commission has not provided a sufficient rationale to depart from this approach in conducting rural broadband experiments.

For these reasons, ITTA believes the FCC should rely on the same CAF Phase II service metrics and buildout obligations established in the *USF/ICC Transformation Order* and not change course in the context of rural broadband experiments. The FCC carefully selected what it believes to be the appropriate thresholds with respect to broadband speeds, usage allowances, latency, reasonable prices, and buildout obligations that are necessary to meet universal service policy objectives. When evaluating rural broadband experiments, the FCC should apply these parameters. In other words, the FCC should accept proposals so long as they are consistent with these parameters and then select the projects that deliver the most broadband for the available budget from among those applications.

With respect to the Commission’s evaluation of proposals based on whether the applicant

²³ *FNPRM* at ¶ 108.

²⁴ *Id.* at ¶ 84.

seeks one-time funding as opposed to recurring support (or vice-versa), this factor should be considered irrelevant. As discussed above, ITTA believes the Commission should establish a fixed budget of no more than \$100 million, setting aside separate funding within the total budget for rural broadband experiments in price cap and RoR areas. Under this scenario, successful applicants would be awarded support in a one-time, lump sum up front. Therefore, whether an applicant seeks recurring support would be immaterial to the Commission's analysis.

III. Additional Considerations

The Commission seeks comment on a variety of other factors it should consider in evaluating and selecting rural broadband experiments.²⁵ Among other things, input is sought regarding (i) what measures should be used to ensure the experiments focus on areas below the 4/1 Mbps standard,²⁶ (ii) what numerical measure should be used to determine whether the extent of competitive overlap is *de minimis*,²⁷ and (iii) whether the FCC should limit support in census tracts where the average cost per location is higher than the extremely high-cost threshold.²⁸

With regard to ensuring that rural broadband experiments focus on areas that lack sufficient broadband, the solution is simple. The Commission should restrict funding to unserved locations. Thus, no funding should be provided for projects that involve overbuilding an existing provider.

In addition, the Commission should avoid using these limited funds for projects that are not really “experimental” in nature, such as proposals to extend networks that were built in reliance on a significant amount of stimulus, loan, or grant funding distributed by other federal

²⁵ *Id.* at ¶¶ 219-23.

²⁶ *Id.* at ¶ 219.

²⁷ *Id.*

²⁸ *Id.* at ¶ 220.

agencies or programs. As Commissioner O’Rielly has pointed out, rural broadband experiments have the potential to duplicate other worthwhile federal government efforts to deploy broadband service, such as the FCC’s own USF and E-Rate initiatives and the United States Department of Agriculture’s gigabit pilot program that was mandated by Congress as part of the 2014 Farm Bill.²⁹ The Commission must carefully consider how proposals for rural broadband experiments fit in with respect to these other initiatives before allocating experimental support for broadband deployment that is or should be funded through other programs.

As for how the FCC should measure the extent of competitive overlap, this assessment can be problematic because it is inherently subjective. As indicated above, the best approach is for the FCC to establish a clear rule that it will only provide funding to unserved locations that will not be reached through expansion of a network deployed with other government funding.

With respect to providing funding in census tracts where the average cost per location is higher than the extremely high-cost threshold, ITTA believes such support should generally be limited. ITTA recognizes that the Commission has expressed an interest in considering proposals that include census blocks where the average cost exceeds the threshold, and we commend the Commission for giving parties the opportunity to demonstrate that there are circumstances in which such areas can economically be served.³⁰ However, rural broadband experiments should focus primarily on expanding service to the most “unserved locations” within a set budget. Thus, as a general matter, the Commission should give preference to those areas that fall below the extremely high-cost threshold when evaluating proposals, although it may make sense to relax this standard to some degree in RoR areas, given that they are some of the most challenging

²⁹ Michael O’Rielly, “Duplication Alert: Broadband Pilot Projects,” Official FCC Blog, Mar. 6, 2014, available at: <http://www.fcc.gov/blog/duplication-alert-broadband-pilot-projects>.

³⁰ See *FNPRM* at ¶ 111.

and expensive areas in the country to serve.

The FCC also seeks input on how it should apply its Eligible Telecommunications Carrier (“ETC”) designation rules in the context of rural broadband experiments.³¹ ITTA agrees with the Commission that applicants for these experiments need not be ETCs at the time they initially apply for funding at the Commission.³² Rather, the Commission should permit any entity wishing to receive experimental support to obtain ETC designation after it is selected to receive such funding; however, no funds should be disbursed until ETC status has been obtained.³³ The requirement to obtain ETC status should be limited to the relevant geographic areas and the specific services for which the entity will receive support. ITTA also agrees with the Commission that applicants that do not have ETC status at the time they submit their proposals must demonstrate their financial and technical capabilities throughout their application to ensure that the proposal is well-developed and can be implemented quickly if selected.³⁴

Finally, the Commission raises a number of questions regarding the impact of rural broadband experiments on model-based support for price cap carriers.³⁵ Specifically, the FCC seeks input on whether experimental areas should be removed from the offer of support in return for a state-level commitment and/or from the Phase II competitive bidding process.³⁶ The Commission also asks whether it should relieve incumbent price cap carriers of ETC obligations

³¹ *Id.* at ¶ 222. Under the FCC’s rules, only ETCs are eligible to receive high-cost and Lifeline universal service support. *See* 47 C.F.R. § 54.201(a).

³² *FNPRM* at ¶ 118.

³³ *Id.*

³⁴ *See id.* at ¶ 119.

³⁵ *Id.* at ¶ 223.

³⁶ *Id.*

in areas where support is awarded to another entity.³⁷

ITTA believes that once an area has been selected for a rural broadband experiment it should no longer be considered eligible for support under CAF Phase II and should be removed from the offer of a state-level commitment by price cap carriers and/or the Phase II competitive bidding process. However, the Commission should replace experimental areas that are removed from the offer of state-level commitment and/or competitive bidding process with other areas that will receive comparable funding. Making additional areas eligible for CAF Phase II support once the experimental areas have been removed is the best way to maximize broadband deployment to households that lack sufficient broadband.

The Commission also must relieve incumbent carriers of their ETC obligations in areas where support for a rural broadband experiment is awarded to another entity. It is not fair to the incumbent carrier or to the new recipient for the FCC to require the incumbent carrier to continue providing service where another provider is receiving support. Furthermore, the Commission must extend similar relief to RoR carriers when support for a rural broadband experiment is provided to another entity for areas where the RoR carrier is the incumbent provider.

IV. Rural Broadband Experiments in RoR Areas

The Commission seeks comment on whether the application process it has adopted for rural broadband experiments in price cap areas should differ in areas where the incumbent provider is a RoR company.³⁸ Among other things, the Commission inquires whether it should (i) adopt a two-phase application window with an advance opportunity for incumbent RoR carriers to submit proposals,³⁹ (ii) allow the RoR incumbent a right of first refusal to conduct the

³⁷ *Id.*

³⁸ *Id.* at ¶¶ 205-10.

³⁹ *Id.* at ¶ 207.

same deployment proposed by a non-incumbent for the same or a lesser amount of support,⁴⁰ and (iii) allow applicants to submit proposals on a census block, rather than census tract basis.⁴¹

ITTA believes the Commission should move forward with adopting these proposals. The Commission has made clear that it does not intend for rural broadband experiments to threaten the financial viability of broadband networks that exist today through support from its existing high-cost mechanisms.⁴² Adopting the proposals set forth above is consistent with this objective.

Limiting the initial application window and providing a right of first refusal to incumbent RoR carriers makes sense because it comports with the Commission's policy preference to leverage existing network infrastructure to expand broadband service in rural areas in order to avoid undermining the substantial previous investment incumbent carriers have made to deploy networks in high-cost areas. To proceed otherwise could result in the imposition of an unfunded mandate in the form of service obligations on incumbent carriers without adequate support. Such unfunded mandates would raise serious constitutional implications under the Takings Clause of the U.S. Constitution.

With respect to whether the Commission should allow applications in RoR service areas to be made at the census block level instead of the census tract level, ITTA agrees with this proposal. As the Commission points out, this approach recognizes that smaller providers may wish to develop proposals for smaller geographic areas.⁴³ Allowing applicants the flexibility to submit proposals on a census block, rather than census tract basis would likely spur greater participation in rural broadband experiments than a more limited approach.

⁴⁰ *Id.*

⁴¹ *Id.* at ¶ 209.

⁴² *Id.* at ¶ 208.

⁴³ *Id.* at ¶ 209.

The Commission also asks whether the CACM could be employed in some fashion to identify potential areas where experiments in RoR areas might be useful.⁴⁴ The CACM in its present form is unsuitable for determining areas that would be eligible for support in RoR areas. While it is possible that the Commission may be able to use the model in some very limited manner to help identify these areas, the data generated by the model should not play a prominent role in the process.

CONCLUSION

In conclusion, ITTA supports the concept of rural broadband experiments as a means to inform the Commission's decision making with respect to implementing the CAF Phase II competitive bidding process and a longer-term CAF mechanism for RoR carriers. However, the Commission must conduct such experiments in a manner that is consistent with its stated goals and the universal service policies it established in the *USF/ICC Transformation Order*.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

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⁴⁴ *Id.* at ¶ 208.